STATE OF MICHIGAN

DEPARTMENT OF LABOR & ECONOMIC GROWTH

OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX
Petitioner **File No. 91566-001**

v

Blue Cross Blue Shield of Michigan
Respondent
_____/

Issued and entered
this 20th day of November 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On August 5, 2008, XXXXX authorized representative of XXXXX (Petitioner) filed a request for external review with the Commissioner of the Office of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq*. The Commissioner reviewed the material submitted and accepted the request on August 12, 2008.

Because it involved medical issues, the Commissioner assigned the case to an independent review organization (IRO) which provided its analysis and recommendations to the Commissioner on August 29, 2008. On October 8, 2008, the IRO provided a revised decision that corrected typographical errors.

II
FACTUAL BACKGROUND

The Petitioner, who is 19 years old, receives health care benefits from Blue Cross Blue Shield of Michigan (BCBSM) under its *Community Blue Group Benefits Certificate*. The Petitioner

received substance abuse treatment at XXXXX in XXXXX from May 1, 2007 until May 23, 2007. BCBSM denied coverage for this treatment. The Petitioner appealed the denial through BCBSM's internal grievance process. After a managerial-level conference on May 30, 2008, BCBSM did not change its decision and issued a final adverse determination on June 6, 2008.

III
ISSUE

Did BCBSM properly deny coverage for the Petitioner's treatment at XXXXX from May 1, 2007 until May 23, 2007?

IV
ANALYSIS

Petitioner's Argument

BCBSM denied coverage for the Petitioner's care at XXXXX because it was not medically necessary. The certificate indicates that for care to be medically necessary it must be appropriate for the patient's symptoms and consistent with the diagnosis. The certificate also states:

> Appropriate means that the type, level and length of care treatment or supply and setting are needed to provide safe and adequate care and treatment.
> -- For inpatient hospital stays, acute care as an inpatient must be necessitated by the patient's condition because safe and adequate care cannot be received as an outpatient or in a less intensified medical setting.

The Petitioner had attempted and failed several outpatient courses of treatment for substance abuse. One of these attempts was in March 2007 with a therapist at the University of XXXXX Addiction Treatment Center. This treatment occurred after two criminal charges were brought against the Petitioner in June 2006 and February 2007. The Petitioner was convicted and jailed briefly when he failed a Breathalyzer test in March 2007. He was released from jail to receive substance abuse treatment at XXXXX Hospital. After this treatment the judge in the Petitioner's case ordered him back to jail or to have long term treatment. He was granted release from jail to receive care at XXXXX in XXXXX. The Petitioner believes that it is clear that his care at XXXXX

was medically necessary and appropriate and therefore should be a covered benefit under his certificate. He argues that BCBSM should be required to pay for this care.

BCBSM's Argument

Under the terms of the certificate of coverage, services must be medically necessary to be a covered benefit. BCBSM's medical consultants reviewed the documentation and concluded that the Petitioner's care at XXXXX was not medically necessary under the terms of the certificate. Therefore, BCBSM concluded the care was not a covered benefit.

Commissioner's Review

The Petitioner's certificate sets forth the benefits that are covered. In *Section 3: Coverage for Hospital, Facility and Alternatives to Hospital care* (page 3.2) the certificate of coverage states:

- For covered services to be payable, they must be medically necessary

Section 7: The Language of Health Care (page 7.13) includes in the definition of medically necessary:

> For inpatient hospital stays, acute care as an inpatient must be necessitated by the patient's condition because safe and adequate care cannot be received as an outpatient or in a less intensified medical setting.

The question of whether the Petitioner's residential substance abuse care at XXXXX was medically necessary was presented to an IRO for analysis as required by section 11(6) of the Patient's Right to Independent Review Act. The IRO physician reviewer is board certified in psychiatry and addiction psychiatry, and has been in active practice for more than ten years.

The IRO reviewer indicated that, on admission to XXXXX on May 1, 2007, the Petitioner reported that his last use of various substances was two months earlier. Withdrawal symptoms were not anticipated because the Petitioner had maintained abstinence for at least one month. The IRO reviewer found no documentation demonstrating that the Petitioner was at risk of immediate physical harm to himself or others due to continued substance abuse. There were no acute signs of

physical or psychiatric decompensation documented at the time of admission. The IRO reviewer concluded that it was not medically necessary for the Petitioner to have been treated at an inpatient level of care from May 1, 2007 until May 23, 2007.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner; in a decision to uphold or reverse an adverse determination the Commissioner must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16) (b). The IRO reviewer's analysis is based on extensive expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in the present case.

The Commissioner accepts the recommendation of the IRO and finds that the Petitioner's substance abuse care at XXXXX was not medically necessary for treatment of his condition and therefore is not a covered benefit under the certificate.

V
ORDER

Respondent BCBSM's June 6, 2008, final adverse determination is upheld. BCBSM is not required to cover the Petitioner's care at XXXXX from May 1, 2007 until May 23, 2007.

Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.